

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

DEMETRIUS FLOWERS

PLAINTIFF

V.

NO. 3:08cv00040 JLH-JWC

G. COOK

DEFENDANT

ORDER

On August 19, 2008, Defendant filed a motion for summary judgment and brief in support (doc. 20, 21) seeking to dismiss Plaintiff's 42 U.S.C. § 1983 complaint on the grounds that he has failed to state a viable claim. By order entered the same date (doc. 23), Plaintiff was notified of his opportunity to file a responsive pleading opposing Defendant's motion for summary judgment. Plaintiff was directed to file his responsive pleading on or before September 8, 2008. Since Defendant also filed a statement of indisputable and material facts (doc. 22), Plaintiff was additionally directed to file a separate, short and concise statement setting forth the facts which he thought needed to be decided at a trial if he disagreed with Defendant's facts. Plaintiff was further advised that his failure to file a statement of facts would result in the facts in Defendant's statement being admitted.

Plaintiff has failed to respond to the pending summary judgment motion and Defendant has filed a motion to dismiss (doc. 25) requesting that his statement of facts be admitted and Plaintiff's complaint dismissed on the merits.

Defendant's motion (doc. 25) is DENIED. This Court will not grant summary judgment on the merits solely due to Plaintiff's failure to respond to the motion.¹ However, the Court may dismiss Plaintiff's case for failure to prosecute this action diligently. Plaintiff is therefore directed to file a responsive pleading within twenty (20) days of this order's entry-date and specifically state whether he wishes to continue this case in light of his failure to respond to the summary judgment motion and in light of Defendant's recitation of the facts being admitted. Plaintiff is advised that his failure to respond to this order will result in the recommended dismissal of his action without prejudice for failure to comply with the Court's orders and for his failure to prosecute.

IT IS SO ORDERED this 15th day of October, 2008.


UNITED STATES MAGISTRATE JUDGE

¹ Fed. R. Civ. P. 56 (e) (2) provides that if an opposing party fails to respond, summary judgment should if appropriate, be entered (emphasis added). While Defendant's statement of undisputed facts must now be deemed admitted under Local Rule 56.1 (c), under the local rule governing motions in general, Local Rule 7.2 (f), only nondispositive motions may be granted solely on the basis of failure to respond. See, Local Rules for the Eastern and Western Districts of Arkansas. In the interests of judicial economy, the Court chooses to see if Plaintiff remains interested in pursuing his claim before dealing with the motion for summary judgment on its merits.